



Brussels, 24 September 2014.

**CUSTOMS-BUSINESS PARTNERSHIP**  
**Guidelines for Transparency and Predictability**

**(Item V. (c) on the Agenda)**

**I. Background**

1. Transparency and predictability of regulations and procedures at borders are widely recognized as an essential element of trade facilitation. Transparent procedures enable traders to fully understand the conditions for and constraints on imports, exports and transit operations, and to gain an accurate picture of possible costs. Predictability in the application of regulations and procedures is also important because uncertainty regarding possible time delays in procedures is interpreted as a concealed cost for business, and may be a major obstacle to smooth transactions.
2. The enhancement of transparency and predictability may encourage businesses, including small and medium-sized enterprises (SMEs), to join international markets and contribute significantly to trade facilitation and economic growth. It involves ensuring that information on border requirements and procedures is clear, and easily available to all interested parties. There are a number of potential means of strengthening transparency and predictability at borders.
3. The WCO and various international and regional organizations have been highlighting the importance of transparency and predictability for some time. For example, the OECD's recent study on Trade Facilitation Indicators indicates that full implementation of Articles 1 and 2 of the TFA "would generate cost savings of 1.7% for low income countries", and that full implementation of advance rulings on Customs matters "would also bring cost reductions of 1.3% for upper middle income countries". In addition, transparency and predictability have been identified as important performance indicators for business. Both the Logistics Performance Index created by the World Bank and the Enabling Trade Index (ETI) developed by the World Economic Forum include the transparency of Customs procedures among their indicators. At regional level, in 2010 Asia-Pacific Economic Cooperation (APEC) adopted a Supply-Chain Connectivity Framework which identifies lack of transparency as the first "chokepoint" in the supply chain.

4. Article 1 of the WTO TFA deals with the publication and availability of information, while Article 2 concerns the opportunity to comment, information before entry into force and consultations with traders or other stakeholders, and Article 3 relates to advance rulings. These provisions are intended to strengthen the principles established by Article X (Publication and Administration of Trade Regulations) of the General Agreement on Tariffs and Trade (GATT) (see Annex I hereto).

## **II. Existing instruments and the need for comprehensive guidelines**

5. The WCO has developed standards and guidance in the area of transparency and predictability. The Revised Kyoto Convention (RKC) contains standards regarding information, decisions and rulings supplied by Customs, as well as consultation with trade (Chapter 1 and Chapter 9 of the RKC General Annex (see Annex II hereto)). The RKC Guidelines provide more technical guidance on each standard. Paragraph 3 of the Revised Arusha Declaration emphasizes the importance of a high degree of certainty and predictability in businesses' dealings with Customs. It emphasizes that Customs laws, regulations, procedures and administrative guidelines should be made public.
6. Both the Guidelines to Chapter 1 of the RKC General Annex and the SAFE Framework of Standards provide guidance and information on consultations with trade, including the scope and characteristics of desired consultative bodies. Customs-Business partnership, through a formal mechanism of regular consultation and engagement, supports consistency, harmonization, transparency, predictability, fairness, automation and efficiency in Customs and business processes. The WCO is currently developing Customs-Business Partnership Guidance in order to assist Members in this regard.
7. In addition, there are several WCO Recommendations related to the enhancement of transparency and predictability, such as the Recommendation on the Use of World Wide Web sites by Customs administrations, which was adopted in 1999. This Recommendation sets out basic information to be made available on Customs web sites, including information for travellers and traders. It also deals with the provision of Customs contact information, including e-mail addresses to be made available to the public.
8. Advance rulings have been covered in detail by various WCO instruments and tools, a number of WCO Recommendations, the Technical Guidelines on Binding Origin Information and the Technical Guidelines on Valuation Control. For this reason advance rulings, which are an important aspect of transparency and predictability, would not need to be addressed in detail in any new tool that might be developed.

## **III. Transparency and Predictability Guidelines**

9. The above-mentioned WCO's tools are compatible, in terms of their substance, with the relevant provisions of the TFA. However, they are scattered across several documents and do not provide enough information about the operational practices and experiences of WCO Members. Therefore, the Secretariat's analysis of Section I of the TFA, which has been reviewed by the WCO Working Group on the TFA, includes the suggestion that the WCO consider developing comprehensive WCO guidelines on transparency and predictability (see PT0013 and the Annex thereto, prepared for the WCO WG on the WTO TFA).

10. Taking into account the existing WCO tools and the current discussions on possible new tools, the following items can be identified as possible components of the WCO Guidelines on transparency and predictability :
- (1) Publication of information on Customs procedures and requirements, fees and charges and other relevant information.
  - (2) Improvement of Customs Administrations' Web sites.
  - (3) Establishment and effective utilization of enquiry points.
  - (4) Use of Information and Communication Technologies.
  - (5) Other measures for transparency and predictability (e.g., procedures for information disclosure).

**IV. Action Required**

11. Members are invited to consider developing comprehensive WCO Guidelines on transparency and predictability, and possible ways forward in this respect.

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## **Main TFA Articles on the availability of information**

### **ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION**

#### **1 Publication**

1.1 Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested parties to become acquainted with them:

- (a) procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;
- (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- (c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- (d) rules for the classification or valuation of products for customs purposes;
- (e) laws, regulations, and administrative rulings of general application relating to rules of origin;
- (f) import, export or transit restrictions or prohibitions;
- (g) penalty provisions for breaches of import, export, or transit formalities;
- (h) procedures for appeal or review;
- (i) agreements or parts thereof with any country or countries relating to importation, exportation, or transit; and
- (j) procedures relating to the administration of tariff quotas.

1.2 Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

#### **2 Information Available Through Internet**

2.1 Each Member shall make available, and update to the extent possible and as appropriate, the following through the internet:

- (a) a description<sup>1</sup> of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders, and other interested parties of the practical steps needed for importation, exportation, and transit;
- (b) the forms and documents required for importation into, exportation from, or transit through the territory of that Member;
- (c) contact information on its enquiry point(s).

2.2 Whenever practicable, the description referred to in subparagraph 2.1(a) shall also be made available in one of the official languages of the WTO.

2.3 Members are encouraged to make available further trade-related information through the internet, including relevant trade-related legislation and other items referred to in paragraph 1.1.

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<sup>1</sup> Each Member has the discretion to state on its website the legal limitations of this description.

**ARTICLE 3: ADVANCE RULINGS**

6. Each Member shall publish, at a minimum:
- (a) the requirements for the application for an advance ruling, including the information to be provided and the format;
  - (b) the time period by which it will issue an advance ruling; and
  - (c) the length of time for which the advance ruling is valid.

**ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION AND PENALTIES**

**1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation**

1.1 The provisions of paragraph 1 shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with the importation or exportation of goods.

1.2 Information on fees and charges shall be published in accordance with Article 1. This information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.

1.3 An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force, except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.

1.4 Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

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## **Main RKC Standards on the availability of information**

### **General Annex – Chapter 1 (general Principles)**

#### **1.3. Standard**

The Customs shall institute and maintain formal consultative relationships with the trade to increase co-operation and facilitate participation in establishing the most effective methods of working commensurate with national provisions and international agreements.

### **General Annex - Chapter 9 (Information, Decisions and Rulings Supplied by the Customs)**

#### **9.1. Standard**

The Customs shall ensure that all relevant information of general application pertaining to Customs law is readily available to any interested person.

#### **9.2. Standard**

When information that has been made available must be amended due to changes in Customs law, administrative arrangements or requirements, the Customs shall make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded.

#### **9.3. Transitional Standard**

The Customs shall use information technology to enhance the provision of information.

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